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13 14 15 16	Walnut Creek, CA 94596 Tel: (925) 938-6100 wood@wcjuris.com Attorneys for Defendant The Center for Medical F (Additional counsel listed on signature page)  UNITED STATES D NORTHERN DISTRIC	ISTRICT COURT,
18 19 20 21 22 23 24 25 26	NATIONAL ABORTION FEDERATION (NAF),  Plaintiff, vs.  THE CENTER FOR MEDICAL PROGRESS; BIOMAX PROCUREMENT SERVICES, LLC; DAVID DALEIDEN (aka "ROBERT SARKIS"); and TROY NEWMAN,  Defendants.	Case No. 3:15-cv-3522 (WHO)  Judge William H. Orrick, III  Defendants David Daleiden and Center for Medical Progress's Motion to Modify TRO to Allow Specified Recordings to be Filed as Part of Amicus Brief  Filed as Part of Amicus Brief
27	PUBLIC V	<u>TERSION</u>
28	DEF.S' MOT. TO MODIFY T	RO – 3:15-CV-3522 (WHO)

**NOTICE OF MOTION** 1 2 TO PLAINTIFF, DEFENDANT TROY NEWMAN, DEFENDANT BIOMAX 3 PROCUREMENT SERVICES, AND THEIR ATTORNEYS OF RECORD: 4 PLEASE TAKE NOTICE THAT on \_\_\_\_\_\_\_, 2016, at \_\_\_\_\_ m., or as 5 soon thereafter as the matter may be heard in Courtroom 2 of the Honorable William H. Orrick, at 6 the United States District Court for the Northern District of California, 17th Floor, 450 Golden 7 Gate Ave., San Francisco, CA 94102, Defendants David Daleiden and Center for Medical Progress 8 (hereinafter "Defendants") shall and hereby do respectfully move the Court pursuant Civil Local 9 Rule 7-2 to modify the temporary restraining order to allow specified recordings to be filed with, 10 served, and discussed in Defendants' amicus brief in the United States Supreme Court. This 11 request is narrowly tailored to afford Defendants the opportunity to fully present their arguments 12 before the Supreme Court in Whole Woman's Health v. Cole, No. 15-274, dealing with abortion 13 clinic regulations. 14 Counsel for Newman supports the granting of the motion. Counsel for NAF opposes it. 15 16 Respectfully submitted, 17 /s/ Catherine Short 18 Counsel for Defendant David Daleiden 19 20 21 22 23 24 25 26 27 28 DEF.S' MOT. TO MODIFY TRO – 3:15-CV-3522 (WHO)

**MOTION TO MODIFY TRO** 

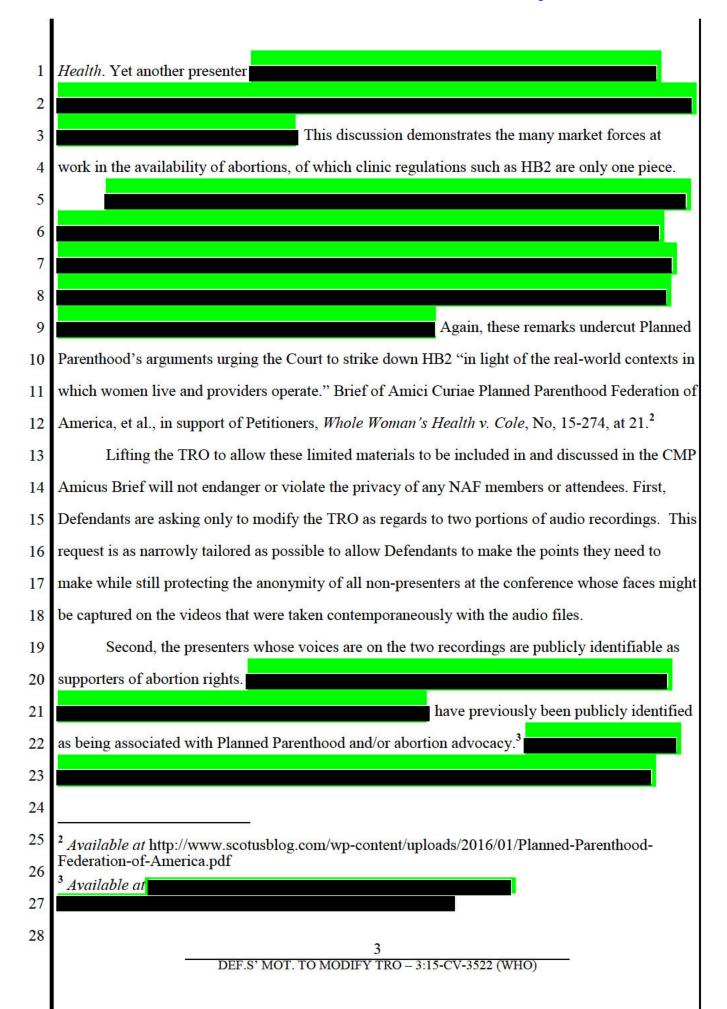
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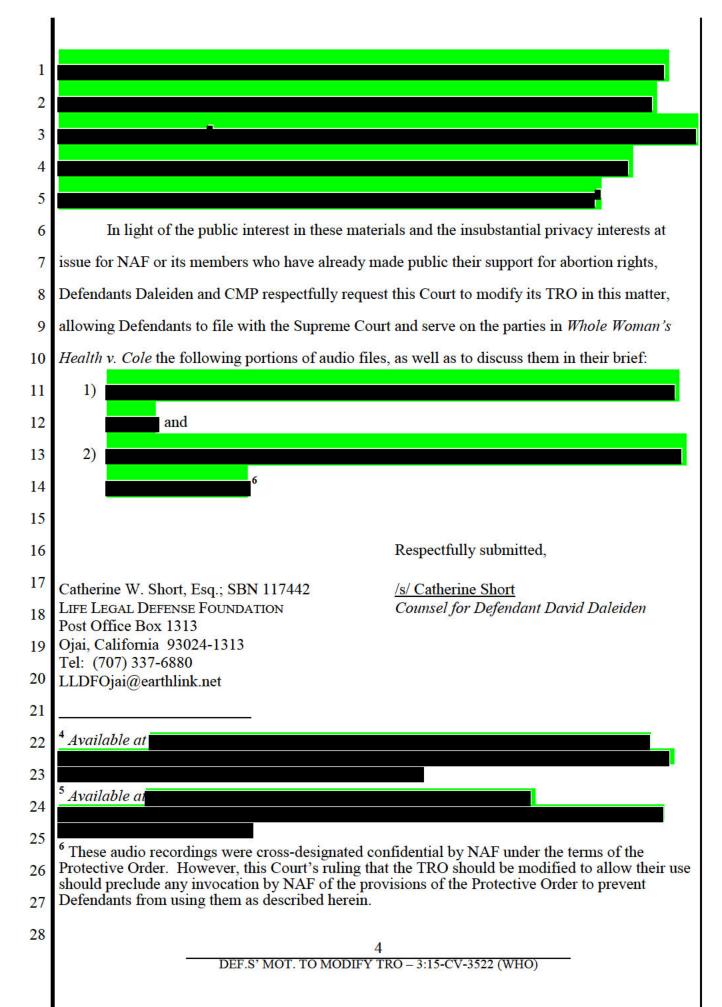
Pursuant to Local Rule 7-2, Defendants respectfully move this Court to modify the temporary restraining order ("TRO") to allow certain recordings covered by the TRO to be filed with, served on the parties, and discussed in an amicus brief that Defendants Daleiden and Center for Medical Progress ("CMP") intend to file in the United States Supreme Court in the case of *Whole Woman's Health v. Cole*, No 15-274.

The *ex parte* TRO was entered in this case on July 31, 2015, the same date the case itself was filed. (Doc. 15). This Order enjoined all Defendants in this matter as well as "your officers, agents, servants, employees, and attorneys" from, among other things not relevant to the instant Motion, "publishing or otherwise disclosing to any third party any video, audio, photographic, or other recordings taken, or any confidential information learned, at any NAF annual meetings." (Doc. 15 at 2: 16, 20-22). The duration of the Order was later extended by stipulation until the Court issues its ruling on NAF's Motion for Preliminary Injunction. (Docs. 27, 34). Arguments were heard on the Motion for Preliminary Injunction on December 18, 2015, but no ruling on the motion has yet issued, leaving the TRO in effect.

In 2013, Texas passed HB2, a law that, *inter alia*, required clinics that provide abortions to meet the standards of all other ambulatory surgical centers. Abortion rights advocates call laws like these "TRAP laws," an acronym for Targeted Regulation of Abortion Providers. Various abortion providers, both corporate and individual, sued to prevent HB2 from going into effect. Currently, parts of the law are enjoined and other parts in effect or in effect in certain localities in Texas. The suit is currently pending at the United States Supreme Court, where argument will be heard on March 2, 2016. *Whole Woman's Health v. Cole*, Docket No. 15-274. One of the two questions presented in the case is whether, under the "undue burden" standard of *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), a state may enforce laws that cause a significant reduction in the availability of abortion services in the interests of promoting maternal health.

Defendants David Daleiden and CMP propose to file an amicus curiae brief in support of 1 2 the State of Texas and HB2. The parties have consented to the filing of the brief, which is due on February 3, 2016. 3 Defendants' proposed brief ("CMP Amicus Brief") responds to the arguments made in the 4 Opening Brief in Whole Woman's Health (filed December 28, 2015) and the briefs of amici 5 Planned Parenthood Federation of America, et al., and National Abortion Federation (filed January 6 4, 2016). The CMP Amicus Brief provides insight into opposition of abortion providers to clinic regulations like those found in HB2. 8 9 Daleiden and CMP are uniquely qualified to file an amicus brief in Whole Woman's Health 10 given the depth of their knowledge regarding the abortion industry gained as a result of the multiyear investigative journalism venture, the Human Capital Project. Piecing together the information 11 learned from various sources, including, for example, the staffing and number of abortions 12 performed daily at one Texas abortion facility Defendants visited, they can speak directly to 13 Amici's contention that the demand for abortion services in Texas cannot be met if HB2 takes full 14 effect. See Brief for National Abortion Federation et al. in Support of Petitioners, at 16 ("The 15 notion that the handful of remaining providers could meet the demand of all Texas women . . . is 16 absurd on its face").1 17 Some of Defendants' information comes from the NAF Annual Meetings, particularly the 18 2015 meeting, which had a session entitled 20 In that session, one presenter employed by 21 the dire predictions made by abortion industry representatives (including 22 Planned Parenthood) made in their filings in the Supreme Court. 23 24 benefits that are never mentioned by the Petitioners and their Amici in Whole Woman's 25 26 Available at: http://www.scotusblog.com/wp-content/uploads/2016/01/National-Abortion-Federation-Fried-Frank.pdf 27 28 DEF.S' MOT. TO MODIFY TRO - 3:15-CV-3522 (WHO)





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	DEF.S' MOT. TO MODIFY TRO – 3:15-CV-3522 (WHO)

1	ATTESTATION PURSUANT TO CIVIL L.R. 5.1(i)(3)
2	As the filer of this document, I attest that concurrence in the filing was obtained from the
3	other signatories.
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5	/s/ Catherine Short Counsel for Defendant David Daleiden
6	Counsel for Defendant David Datelden
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